

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

September 8, 2006

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

PSF No.: 05HD-238

Hawaii

Sale of Lease at Public Auction for Commercial Purposes, Waiakea, South Hilo,  
Hawaii, Tax Map Key:2-4-41:45.

REQUEST:

Sale of lease at public auction for commercial purposes as allowed under current County  
of Hawaii zoning of Neighborhood Commercial (CN-10).

LEGAL REFERENCE:

Sections 171-6,-13, -14, -16, -17, -18, -36, -41, and other applicable sections of Chapter 171,  
Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Waiakea Homesteads, situated at Waiakea, South Hilo,  
Hawaii, identified by Tax Map Key: 2-4-41:45, as shown on the attached map labeled  
Exhibit A.

AREA:

2.957 acres, more or less, subject to confirmation by the Department of Accounting and  
General Services, Survey Division.

ZONING:

State Land Use District: Urban  
County of Hawaii, CZO: Neighborhood Commercial (CN-10)

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CURRENT USE STATUS:

Vacant and unencumbered.

CHARACTER OF USE:

Commercial and multi-family residential uses consistent with the current County of Hawaii zoning designation of Neighborhood Commercial (CN-10) purposes.

LEASE TERM:

Sixty Five (65) years.

COMMENCEMENT DATE:

Sixty (60) days after the date of the publication of the final Environmental Assessment and Finding of No Significant Impact being published in the OEQC bulletin; provided that if such date is not on the first day of any month, the commencement date shall be the first day of the month following such date; and further provided that the Chairperson may amend the commencement date for good cause.

KNOWN RENT PERIOD:

Twenty (20) years, subject to fixed increases in the minimum annual base rent

FIXED INCREASES IN MINIMUM ANNUAL BASE RENT:

The frequency and amount of increases in the minimum annual base rent during the 20 year known rent period to be determined by staff or independent appraisal, subject to review and approval by the Chairperson.

PERCENTAGE RENT:

The percentage rent and a list of the types of uses that would be subject to a percentage rent, if supported by the market, shall be determined by staff or independent appraisal, subject to review and approval by the Chairperson.

EFFECTIVE RENTAL:

The greater of the annual minimum base rent or annual percentage rent, if any.

**FREQUENCY OF RENT PAYMENTS:**

Annual minimum base rent to be paid in semi-annual payments, in advance. Percentage rent, if any, to be paid annually in arrears, no later than sixty (60) days after the close of the annual base rent payment period; provided, however, that the Chairperson may extend the deadline for payment of percentage rents for good cause.

**PERIODIC REPORTING:**

Lessee shall submit quarterly reports detailing the gross revenues from uses and operations on the property. The reports shall be submitted no later than 30 days after the close of the quarter.

**RENTAL REOPENINGS:**

At the end of the 20<sup>th</sup>, 30<sup>th</sup>, 40<sup>th</sup> and 50<sup>th</sup> year of the lease term, as determined by staff or independent appraisal. The reopening shall determine both the base and percentage rent as applicable.

**PERFORMANCE BOND:**

Twice the annual rental amount.

**MINIMUM IMPROVEMENTS:**

Within 3 years from the commencement date of the lease, the Lessee shall have completed the construction of structures, paving and landscaping improvements having a value of not less than \$3,000,000.00. Said improvements shall be in accordance with plans submitted to the Chairperson for approval prior to their construction.

**IMPROVEMENT BOND:**

Amount of improvements.

**RENT WAIVER:**

The lease rental for the first twelve (12) months after the commencement date of the lease shall be waived, pursuant to HRS § 171-6 (7)

**SUBLETTING:**

The Lessee shall be permitted to sublet portions of the property located within the improvements constructed on the property without further consent of the Lessor.

## PROPERTY CHARACTERISTICS:

Utilities – electricity, telephone and water

Existing Improvements - none

Legal access to property – Staff has verified that there is legal access to the property as it is bordered by Ainaola Drive, Komohana Street and Kilaha Street.

Subdivision – Staff has verified that the subject property to be auctioned is a legally subdivided lot.

Encumbrances – Staff has verified that the following encumbrances exist on the property: lod 28,525, Hawaii Electric Light Company- perpetual easement for utility purposes, total area of 31 square feet.

## CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The successful bidder shall be responsible for compliance with Chapter 343, HRS and the submission of a Draft Environmental Assessment, acceptable to the Chairperson, to the OEQC within six months of the date of the auction. The successful bidder shall submit, an acceptable Final Environmental Assessment, resulting in a Finding of No Significant Impact ("FONSI") within a year of the date of auction.

Should the successful bidder fail to obtain a FONSI within a year of the date of auction, either the successful bidder or the State of Hawaii may elect to terminate any and all obligations to enter into the lease by providing the other party with 60 days written notice.

## REMARKS:

As a part of the State's development of the Waiakea Houselots Subdivision, an area of approximately 2.95 acres was set aside for commercial use and is currently zoned as Neighborhood Commercial under County of Hawaii zoning. Although staff assumes that the State Housing Agency, at that time, complied with Chapter 343, HRS as part of the development, due to the length of time that has lapsed, staff cannot locate any evidence of compliance and is recommending that the successful bidder be required to prepare an Environmental Assessment (EA) in compliance with Chapter 343, HRS, requirements in connection with their specific plans for the property. While DLNR could prepare the EA prior to holding the public auction for the lease, the current neighborhood-commercial zoning permits a wide range of uses, each with potentially different impacts. Describing and evaluating the potential impacts from all possible uses allowed under the current zoning would be burdensome, and much of the analysis would be unnecessary since the uses and impacts are purely speculative prior to the public auction. Therefore, staff believes it would be more appropriate for the successful bidder to prepare the EA, since the actual use will be known and the impacts from that particular use, may then be

properly described and evaluated.

The property is a prime corner at the intersection of Komohana Street, a major mauka cross town connector road, and Ainaola Drive, a primary road to the Waiakea Uka area of Hilo. At one time, Komohana Street was identified as the future connector to Keaau under the County's General Plan. However, this has since been reconsidered due to the significant costs that would be associated with the condemnation of existing homes.

Staff believes the current zoning of neighborhood commercial is the highest and best use of the property. The Waiakea area of Hilo continues to be a popular residential area and has seen a significant increase in home construction as well as subdivision development. Aside from a small convenience center located about a half-mile makai of the property (which includes a gas station, convenience store, video rental and hair salon), the subject property is the only land zoned for commercial use in the immediate area and provides the opportunity for the development of neighborhood commercial uses to serve the residences in the area. Staff feels the lack of other neighborhood commercial sites and the property's existing neighborhood commercial zoning will generate interest from credible commercial users. Staff erected a "For Lease" sign two weeks prior to the drafting of this submittal and received two calls of interest. Staff has attached an aerial photo as Exhibit B for the Board's review.

The only agency comments of any significance are listed below and attached as Exhibits:

Police Department, County of Hawaii

The Police Department comment (Exhibit C) was that access to the lot be limited to Kilaha Street. Staff's response (Exhibit D) expressed concern over the practicality of limiting access to the property to Kilaha Street, especially for a commercial use. Komohana Street and Ainaola Drive are the major connector streets with the bulk of the traffic while Kilaha Street is a local subdivision street. Staff is suggesting that a right-in and right-out access from Ainaola Drive may be a reasonable alternative. However, staff indicated that the issue will be worked out as part of the Chapter 343, HRS process that will have the specific proposed development considerations identified.

Fire Department, County of Hawaii

The Fire Department comments are attached as Exhibit E and are typical comments that need to be considered as part of any commercial development. Staff can pass these comments onto the winning bidder for consideration in its planning process.

Department of Health, State of Hawaii

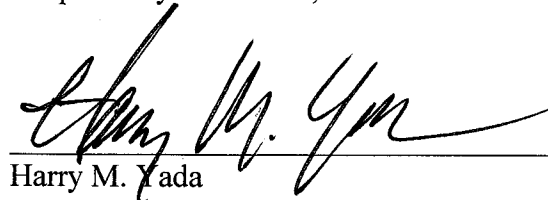
The Department of Health comments are attached as Exhibit F and are typical comments that need to be considered as part of any commercial development. Staff can pass these comments onto the winning bidder for consideration in its planning process

RECOMMENDATION: That the Board:

1. Find the area to be an economic unit in terms of the intended use.
2. Find that the subject area is not suitable for hunting, nor will it become so during the term of the lease.
3. Authorize the sale of a lease at public auction covering the subject area for commercial purposes consistent with the current County zoning, under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
  - a. The standard terms and conditions of the most current business and commercial general lease form, as may be amended from time to time;
  - b. The successful bidder shall be responsible for the submission of a Draft Environmental Assessment, acceptable to the Chairperson, to the OEQC within six months of the date of the auction;
  - c. The successful bidder shall submit, an acceptable Final Environmental Assessment, resulting in a Finding of No Significant Impact ("FONSI") within a year of the date of auction.
  - d. Should the successful bidder fail to obtain a FONSI within a year of the date of auction, either the successful bidder or the State of Hawaii may elect to terminate any and all obligations to enter into the lease by providing the other party with 60 days written notice;
  - e. The Chairperson may approve extensions to the foregoing deadlines of up to twelve (12) additional months subject to terms and conditions deemed necessary or desirable by the Chairperson, including but not limited to the payment by the successful bidder of an extension fee;
  - f. Waiver of the Board's consent to subleases of portions of the property located within the improvements constructed or owned by the Lessee;
  - g. Review and approval by the Department of the Attorney General; and

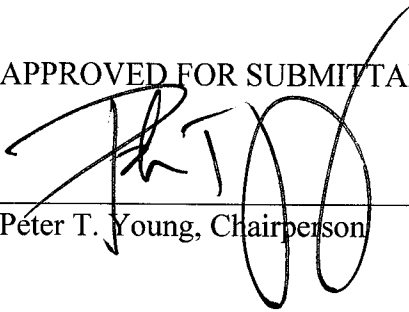
- h. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Harry M. Yada  
District Land Agent

APPROVED FOR SUBMITTAL:



Peter T. Young, Chairperson

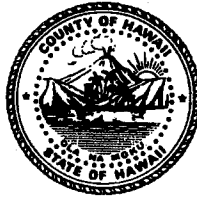








Harry Kim  
Mayor



Lawrence K. Mahuna  
Police Chief

Harry S. Kubojiri  
Deputy Police Chief

2006 MAY -21 A 11:30 County of Hawaii

**POLICE DEPARTMENT**

RECEIVED  
LAND DIVISION  
HILO, HAWAII

349 Kapiolani Street • Hilo, Hawaii 96720-3998  
(808) 935-3311 • Fax (808) 961-8869

April 27, 2006

Mr. Harry Yada, District Land Agent  
State Department of Land and Natural Resources  
Land Division  
75 Aupuni Street, Room 204  
Hilo, Hawaii 96720

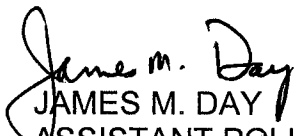
Dear Mr. Yada:

**Subject: Sale of Lease at Public Auction for Commercial Purposes;  
Waiakea, South Hilo, Hawaii; Tax Map Key: 3<sup>rd</sup>/2-4-41:45; State of  
Hawaii Department of Land and Natural Resources, Land Division**

A study was conducted of this location and there is one concern. Any developer that plans to use this area for a commercial enterprise should be required to construct their entry/exit off of Kilaha Street and not off of the busier streets of Ainaola or Komohana.

If this requirement is met, we would not anticipate any significant impact on traffic and public safety.

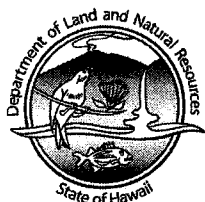
Sincerely,

  
JAMES M. DAY  
ASSISTANT POLICE CHIEF  
AREA I OPERATIONS

LW/JMD:lli

**EXHIBIT C**

LINDA LINGLE  
GOVERNOR OF HAWAII



**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
LAND DIVISION**

75 Aupuni Street, Room 204  
Hilo, Hawaii 96720  
PHONE: (808) 974-6203  
FAX: (808) 974-6222

**PETER T. YOUNG**  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

**ROBERT K. MASUDA**  
DEPUTY DIRECTOR

**DEAN NAKANO**  
ACTING DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

August 8, 2006

Mr. James M. Day, Asst. Police Chief  
County of Hawaii  
Police Department  
349 Kapiolani Street  
Hilo, Hawaii 96720-3998

Dear Mr. Day:

Subject: Response to Request for Comments – Sale of Lease for  
Commercial Purposes, Waiakea, South Hilo, Hawaii  
Tax Map Key: 3<sup>rd</sup>/ 2-4-41: 45

Thank you for your response to our request for comment in connection with the subject proposed lease by the State of Hawaii. Although we understand your concern regarding the entry/exit from this site, it may be impractical to limit the entry/exit to Kilaha Street in connection with a commercial enterprise. It may be practical to allow an access from Ainaola Drive but limit it to a right-in and right-out only.

Due to the legal requirement that any lease on this site be issued by public auction, it is impossible to determine the type of development that may be proposed by the winning bidder. As such, it is our intent to require the winning bidder to comply with Chapter 343, HRS and prepare an environmental assessment in connection with the development. In this way, the actual proposed use and corresponding traffic impact can be specifically evaluated.

Thank you again for your comments. Should you have any questions or concerns, please do not hesitate to contact myself at 974-6203.

Sincerely,

  
Harry M. Yada  
District Land Agent

**EXHIBIT D**

**Harry Kim**  
Mayor



**Darryl J. Oliveira**  
Fire Chief

**Desmond K. Wery**  
Deputy Fire Chief

## County of Hawai'i

### FIRE DEPARTMENT

25 Aupuni Street • Suite 103 • Hilo, Hawai'i 96720  
(808) 961-8297 • Fax (808) 961-8296

April 18, 2006

State of Hawaii  
Department of Land and Natural Resources  
Land Division  
75 Aupuni Street, Room 204  
Hilo, Hawaii 96720

**SUBJECT:** SALE OF LEASE AT PUBLIC AUCTION FOR COMMERCIAL PURPOSES  
LOCATION/TAX MAP KEY: WAIAKEA, SOUTH HILO; 3<sup>RD</sup>- 2-4-41:45  
APPLICANT: STATE OF HAWAII, DEPT. OF LAND AND NATURAL  
RESOURCES, LAND DIV.

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In regards to the above-mentioned, the following shall be in accordance:

Fire apparatus access roads shall be in accordance with UFC Section 10.207:

#### "Fire Apparatus Access Roads

"Sec. 10.207. (a) **General.** Fire apparatus access roads shall be provided and maintained in accordance with the provisions of this section.

"(b) **Where Required.** Fire apparatus access roads shall be required for every building hereafter constructed when any portion of an exterior wall of the first story is located more than 150 feet from fire department vehicle access as measured by an unobstructed route around the exterior of the building.

"**EXCEPTIONS:** 1. When buildings are completely protected with an approved automatic fire sprinkler system, the provisions of this section may be modified.

"2. When access roadways cannot be installed due to topography, waterways, nonnegotiable grades or other similar conditions, the chief may require additional fire protection as specified in Section 10.301 (b).

**EXHIBIT E**



"3. When there are not more than two Group R, Division 3 or Group M Occupancies, the requirements of this section may be modified, provided, in the opinion of the chief, fire-fighting or rescue operations would not be impaired.

"More than one fire apparatus road may be required when it is determined by the chief that access by a single road may be impaired by vehicle congestion, condition of terrain, climatic conditions or other factors that could limit access.

"For high-piled combustible storage, see Section 81.109.

"(c) **Width.** The unobstructed width of a fire apparatus access road shall meet the requirements of the appropriate county jurisdiction.

"(d) **Vertical Clearance.** Fire apparatus access roads shall have an unobstructed vertical clearance of not less than 13 feet 6 inches.

"**EXCEPTION:** Upon approval vertical clearance may be reduced, provided such reduction does not impair access by fire apparatus and approved signs are installed and maintained indicating the established vertical clearance.

"(e) **Permissible Modifications.** Vertical clearances or widths required by this section may be increased when, in the opinion of the chief, vertical clearances or widths are not adequate to provide fire apparatus access.

"(f) **Surface.** Fire apparatus access roads shall be designed and maintained to support the imposed loads of fire apparatus and shall be provided with a surface so as to provide all-weather driving capabilities." (20 tons)

"(g) **Turning Radius.** The turning radius of a fire apparatus access road shall be as approved by the chief." (45 feet)

"(h) **Turnarounds.** All dead-end fire apparatus access roads in excess of 150 feet in length shall be provided with approved provisions for the turning around of fire apparatus.

"(i) **Bridges.** When a bridge is required to be used as access under this section, it shall be constructed and maintained in accordance with the applicable sections of the Building Code and using designed live loading sufficient to carry the imposed loads of fire apparatus.

"(j) **Grade.** The gradient for a fire apparatus access road shall not exceed the maximum approved by the chief." (15%)

"(k) **Obstruction.** The required width of any fire apparatus access road shall not be obstructed in any manner, including parking of vehicles. Minimum required widths and clearances established under this section shall be maintained at all times.

"(l) **Signs.** When required by the fire chief, approved signs or other approved notices shall be provided and maintained for fire apparatus access roads to identify such roads and prohibit the obstruction thereof or both."

Water supply shall be in accordance with UFC Section 10.301(c):

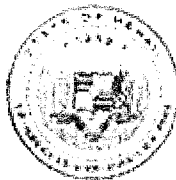
"(c) **Water Supply.** An approved water supply capable of supplying required fire flow for fire protection shall be provided to all premises upon which buildings or portions of buildings are hereafter constructed, in accordance with the respective county water requirements. There shall be provided, when required by the chief, on-site fire hydrants and mains capable of supplying the required fire flow.

"Water supply may consist of reservoirs, pressure tanks, elevated tanks, water mains or other fixed systems capable of providing the required fire flow.

"The location, number and type of fire hydrants connected to a water supply capable of delivering the required fire flow shall be protected as set forth by the respective county water requirements. All hydrants shall be accessible to the fire department apparatus by roadways meeting the requirements of Section 10.207.

  
DARRYL OLIVEIRA  
Fire Chief

JCP:lpc



STATE OF HAWAII  
DEPARTMENT OF HEALTH  
P.O. BOX 916  
HILO, HAWAII 96721-0916

2006 MAY -2 A 10: 01

RECEIVED  
LAND DIVISION  
HILO, HAWAII

MEMORANDUM

DATE: May 1, 2006

TO: Harry Yada, District Land Agent  
Department of Land and Natural Resources

FROM: Donn A. Hashimoto *DA*  
Acting District Environmental Health Program Chief

SUBJECT: Sale of Lease at Public Auction for Commercial Purposes

LOCATION: Waiakea, South Hilo, Hawaii; Tax Map Key: 2-4-41:45

APPLICANT: **STATE OF HAWAII, DEPT. OF LAND AND NATURAL RESOURCES**  
**LAND DIVISION**

The use of individual wastewater systems is allowed. The type and number of individual wastewater systems to be used will be determined by the wastewater rules in effect at the time of building permit application.

Dispensing site locations and food preparation areas would need to meet the requirements of Chapter 12, Food Establishment Sanitation Code. The applicant may call Ph. 933-0917 to discuss the content of this communication.

The Department of Health (DOH), Clean Water Branch (CWB), acknowledges receipt of the subject document on April 17, 2006. The CWB has reviewed the limited information contained in the subject document and offers the following comments:

1. The Army Corps of Engineers should be contacted at (808) 438-9258 for this project. Pursuant to Federal Water Pollution Control Act (commonly known as the "Clean Water Act" (CWA)), Paragraph 401(a)(1), a Section 401 Water Quality Certification (WQC) is required for "[a]ny applicant for Federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in any discharge into the navigable waters...". The term "discharge" is defined in CWA, Subsections 502(16), 502(12), and 502(6); Title 40, Code of Federal Regulations, Section 122.2, and Hawaii Administrative Rules (HAR), Chapter 11-54.

**EXHIBIT F**

2. In accordance with HAR, Sections 11-55-04 and 11-55-34.05, the Director of Health may require the submittal of an individual permit application or a Notice of Intent (NOI) for general permit coverage authorized under the National Pollutant Discharge Elimination System (NPDES).
  - a. An application for an NPDES individual permit is to be submitted at least 180 days before the commencement of the respective activities. The NPDES application forms may also be picked up at our office or downloaded from our website at <http://www.hawaii.gov/health/environmental/water/cleanwater/forms/individual-index.html>.
  - b. An NOI to be covered by an NPDES general permit is to be submitted at least 30 days before the commencement of the respective activity. A separate NOI is needed for coverage under each NPDES general permit. The NOI forms may be picked up at our office or downloaded from our website at: <http://www.hawaii.gov/health/environmental/water/cleanwater/forms/general-index.html>.
    - i. Storm water associated with industrial activities, as defined in Title 40, Code of Federal Regulations, Sections 122.26(b)(14)(i) through 122.26(b)(14)(ix) and 122.26(b)(14)(xi). [HAR, Chapter 11-55, Appendix B]
    - ii. Construction activities, including clearing, grading, and excavation, that result in the disturbance of equal to or greater than one (1) acre of total land area. The total land area includes a contiguous area where multiple separate and distinct construction activities may be taking place at different times on different schedules under a larger common plan of development or sale. An NPDES permit is required before the commencement of the construction activities. [HAR, Chapter 11-55, Appendix C]
    - iii. Discharges of treated effluent from leaking underground storage tank remedial activities. [HAR, Chapter 11-55, Appendix D]
    - iv. Discharges of once through cooling water less than one (1) million gallons per day. [HAR, Chapter 11-55, Appendix E]
    - v. Discharges of hydrotesting water. [HAR, Chapter 11-55, Appendix F]
    - vi. Discharges of construction dewatering effluent. [HAR, Chapter 11-55, Appendix G]



- vii. Discharges of treated effluent from petroleum bulk stations and terminals. [HAR, Chapter 11-55, Appendix H]
  - viii. Discharges of treated effluent from well drilling activities. [HAR, Chapter 11-55, Appendix I]
  - ix. Discharges of treated effluent from recycled water distribution systems. [HAR, Chapter 11-55, Appendix J]
  - x. Discharges of storm water from a small municipal separate storm sewer system. [HAR, Chapter 11-55, Appendix K]
  - xi. Discharges of circulation water from decorative ponds or tanks. [HAR, Chapter 11-55, Appendix L]
2. In accordance with HAR, Section 11-55-38, the applicant for an NPDES permit is required to either submit a copy of the new NOI or NPDES permit application to the State Department of Land and Natural Resources, State Historic Preservation Division (SHPD), or demonstrate to the satisfaction of the DOH that the project, activity, or site covered by the NOI or application has been or is being reviewed by SHPD. If applicable, please submit a copy of the request for review by SHPD or SHPD's determination letter for the project.
3. Any discharges related to project construction or operation activities, with or without a Section 401 WQC or NPDES permit coverage, shall comply with the applicable State Water Quality Standards as specified in HAR, Chapter 11-54.

Hawaii Revised Statutes, Subsection 342D-50(a) requires that "[n]o person, including any public body, shall discharge any water pollutants into state waters, or cause or allow any water pollutant to enter state waters except in compliance with this chapter, rules adopted pursuant to this chapter, or a permit or variance issued by the director."

If you have any questions, please contact Mr. Alec Wong, Supervisor of the Engineering Section, CWB, at (808) 586-4309.